



# Terms and Conditions



**1. Agreement:** These Terms and Conditions apply to all products and services sold, furnished or provided by Tate Engineering Systems, Inc. (the "Company") unless superseded by other terms to which the Company has agreed in writing. No additional or different terms contained in any other document, except as to the price of such goods, the method and cost of shipment, the quantity sold, and the delivery date and location, each of which are expected to be set forth from time to time in a separate agreement, sales order or purchase order, will have any force or effect unless they are in a writing signed by an officer of the Company.

**2. Quotations and Proposals:** Prices quoted do not include any sales, use, excise, occupational or other similar tax, Davis Bacon or Service Contracting Act or freight unless otherwise specified. All quoted prices are subject to change, after thirty (30) days, without notice unless the Company has guaranteed price protection in writing. Price protection shall remain in effect for 30 days from the date a written price quotation or offer is provided by the Company, unless otherwise specified in writing.

**3. Acceptance:** All orders are subject to approval and written acceptance by an authorized representative of the Company. Any changes require written consent and may result in a change in price, delivery, payment or performance warranties. No equipment orders will be placed and no work will be scheduled without an executed purchase order or Contract. Buyer acknowledges and agrees that any purchase order issued by Buyer in accordance with this agreement, is intended only to establish payment authority for accounting purposes. No purchase order shall be considered a counteroffer, amendment, modification or other revision to the terms of this agreement. No term or condition included in the Buyer's purchase order will have any force or effect.

**4. Payment Terms:** Payment terms are as indicated in the Company quote or proposal, or if not shown, thirty (30) days net from date of invoice unless otherwise agreed in writing. All payments shall be made in USD without deduction, deferment, set-off, lien or counterclaim of any nature. All payments are due at the location stated on the invoice. A finance charge of 1.5% per month (18% *per annum*) will be assessed on all balances due and unpaid after 30 days. Buyer shall be liable for all expenses relating to the collection of any monies due the Company including, without limitation, attorneys' fees and court costs. All payments made with a credit card or payment card will be subject to a 3% processing fee calculated on the total payment amount.

**5. Delivery:** Delivery lead times and schedules are based on the Company's receipt of timely and accurate information from Buyer. All products shipped by common carrier are shipped F.O.B. and delivery to carrier shall constitute delivery to Buyer. All risk of loss or damage in transit shall be borne by Buyer. If, because of Buyer's inability to take delivery, the products are not shipped or are returned, the Company may have them stored for Buyer at Buyer's expense, risk, and account, and for all other purposes they shall be considered "shipped". Buyer shall unload, handle, store and install the products in accordance with generally accepted practice or specific instructions provided for the equipment, membranes and/or media. All items sold hereunder shall be packed or crated and shipped in accordance with the Company specifications. Any special packing, crating, shipping or unloading requirements of Buyer must be agreed upon by the Company in advance. Weights listed, if any, are approximate. In the event of additional freight, labor, or material costs resulting from a Buyer's request to avoid delays with respect to equipment warranties or accelerated delivery of parts and supplies, the Buyer agrees to pay these additional costs at the Company's currently established rates.

**6. Inspection:** Any and all machinery, parts, tooling and mechanisms delivered directly to the Buyer are to be inspected at the time of delivery. All damage must be reported to the shipper/freight company and Tate Engineering Systems, Inc. and documented at the time of delivery or Buyer will be deemed to have waived any and all claims for damages, defects, shortages, or for any other cause. Any damage notification must include the date of the occurrence, a description of the circumstances giving rise to the claim and a calculation

of the claimed damages. Failure to give such notice of any damage or shortage, at the time of delivery, will be accepted as satisfactory shipment by the Company and acceptance by Buyer of all items listed as contained. Tate Engineering Systems will not be held liable legally or monetarily for (including but not limited to) parts or labor due to damage of said delivered products unbeknownst to Tate Engineering Systems, Inc. at the time of install. There shall be no right of offset and the Buyer shall not be permitted to deduct any claims it may have or believe it has against the Company against any amounts due and owing the Company for products or services. All Buyer claims will be processed and determined independent of Buyer's obligation to render full payment to the Company.

**7. Tax:** The Company will accept sales tax exemption certificate Company and exclude appropriate sales and use taxes from the invoice total provided that (1) Buyer provides the Company with a sales tax exemption certificate issued by the state that charges the particular tax in question, (2) Buyer's purchase is to be used for the same purpose the exemption certificate was granted by the state, (3) the name on the exemption certificate is Buyer's current legal name, and (4) the exemption certificate has not expired. A request by Buyer for an exemption from tax constitute Company Buyer's warranty that the exemption is justified and Buyer promises to indemnify the Company against all claims, liabilities, interest, and penalties, including reasonable attorney's fees that result from any attempt by a state to collect from the Company taxes which the Company did not charge and receive from Buyer.

**8. Returned Goods:** Goods sold by the Company may not be returned without permission of the Company and, if return is permitted, such returned goods must be in salable condition and in their original packaging. Special orders may not be returned until authorized by the manufacturer. Credit for special orders is limited to the credit allowed by the manufacturer. Goods returned for the convenience of Buyer or canceled by Buyer are subject to freight and handling charges and a 25 % restocking charge.

**9. Plans and Specifications:** The Company makes no representation that the description of goods provided by Buyer to the Company conforms to any plans and specification for goods needed by Buyer. Buyer is cautioned to compare the Company quotation with Buyer's actual specified requirements to avoid error. The Company assumes no responsibility for any addenda and/or alternates to the Company to specified requirements. Any alternate goods offered by the Company are based on the Company's interpretation of the specifications, and the Company does not guarantee approval of acceptance of such goods by the specifying authority.

**10. General Conditions:** The Company reserves the right at any time to discontinue shipping goods should events come to the Company's attention that, in its opinion, warrants the termination of credit sales. Performance under the terms of this agreement is conditional upon the Buyer maintaining its account in accordance with the Company payment terms. If the Buyer fails to make timely payments per the Company's terms, shipments and/or services will be suspended until corrective action is taken. Only the Company's personnel or agent are authorized to perform the work included in the scope of any agreement between Buyer and the Company. The Company may at its option, cancel or waive its obligations under any agreement should non-authorized individuals perform such work.

**11. Repairs and Alterations:** Any repairs or alterations made to goods shall void all warranties and be at the expense of Buyer unless specifically authorized in writing by the Company. In no event shall the Company accept back charges for unauthorized repairs or alterations.

**12. Warranty:** The Company warrants its products against defects in workmanship for a period of ninety (90) days from the date of work. The Company passes through manufacturer's warranties on products to Buyer, subject to all Terms and Conditions thereof. Specifications provided by the Company are guidelines only and the particular use and application will determine the actual life of the product. The Company liability under this warranty shall be limited to the replacement or repair, at the Company's sole discretion, of any defective product which having

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been returned to the factory by Buyer, transportation charges prepaid, has been inspected and determined by the Company to be defective. The warranty on component parts not manufactured by the Company is limited to the warranty provided by the manufacturer thereof, if any. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, or other expenses which may be incurred in connection with replacement or repair.

The foregoing warranties are Buyer's exclusive remedy and in lieu of all other express and implied warranties, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, course of dealing and usage of trade. Neither the Company nor any of its subsidiaries or affiliates makes any express or implied warranties with respect to any goods sold by the Company or by any other person.

Except as stated above regarding "claims," Buyer's sole and exclusive remedy for breach of warranty or negligence by the manufacturer, or for any failure, defect or inadequacy of any kind of the goods sold by the Company is against the manufacturer of goods sold to Buyer and not against the Company. Any proposal by the Buyer to vary the terms hereof or to expand the warranties or other terms set forth herein unless agreed to in writing by an authorized officer on behalf of the Company, shall be deemed a material alteration and shall not become part of these Terms and Conditions or any other agreement between the parties.

The guarantees and warranties provided in this agreement are conditioned upon full payment to the Company by Buyer of all amounts owed as well as the Buyer's operation and maintenance of all systems/equipment in accordance with industry-accepted practices, including water treatment where applicable, and in consideration of Manufacturer's recommendations. Buyer will provide and permit the Company and the manufacturer reasonable access to all covered equipment. The Company will be allowed to start and stop equipment as necessary to perform its services and be permitted use of existing facilities and buildings services.

The Company shall not be liable for: (a) the operation of the equipment nor for injuries to persons or damaged property, except those directly and solely due to the negligent acts or omissions of the Company employees; (b) expense incurred in the removing, replacing or refinishing any part of the building structure necessary to the performance of this Agreement; or (c) any loss by reason of strikes or labor troubles affecting its employees who perform the service called for herein, delays in transportation, delay caused by priority or preference rating, or orders or regulations established by any government, authority, or by unusual delays in procuring supplies or for any other cause beyond the reasonable control of the Company.

**13. Site:** If the subject of the Purchase Order includes service by the Company on Buyer's site, Buyer shall be responsible and fully liable for the disposal of any product, including, without limitation, spent product or material, and shall perform such disposal in compliance with all federal, state and local laws and regulations relating thereto.

**14. Limitation of Liability:** Under no circumstances shall the Company be liable to Buyer or any other person or entity for incidental, consequential, indirect, exemplary, punitive or special damages or any other losses or expenses, including without limitation, for injuries to persons or damage to property, loss of profit or revenues, cost of substitute products, loss of use, downtime costs, or claims of Buyer's customers even if the Company has been advised of the possibility of such damages. The Company's aggregate liability arising out of or relating to any products or services purchased shall not exceed payment from the Buyer actually received by the Company for purchase of the defective products.

**15. Technical Assistance:** Upon reasonable request, the Company may make available to Buyer the services of a trained representative at the Company's then current prevailing rates, plus travel, living and out-of-pocket expenses. In no event shall charges for technical direction of field installation and/or start-up be considered as

included in the quoted price unless otherwise expressly stated in writing by the Company.

**16. Indemnity:** The Buyer shall defend, indemnify and hold harmless the Company, its agents, directors, officers and employees, from and against any and all claims, demands, causes of action, losses, costs, damages, liabilities and expenses (including reasonable legal fees) arising out of or resulting from Buyer's breach of any provision of this agreement or any negligent acts or omissions of Buyer, or its agents, employees, subcontractors, vendors or invitees in connection with this agreement.

**17. Hazardous Substances:** The Company's scope of work shall not include the identification, detection, abatement encapsulation or removal of asbestos or products or materials containing asbestos or similar hazardous substances. In the event the Company encounters such material in performing its work, the Company will have the right to discontinue work and remove its employees until the hazard is remediated or a determination is made that no hazard exists. The Company is not responsible for the removal or disposal of any hazardous materials.

**18. Applicable Law/Jurisdiction/Jury Trial Waiver:** The laws of the State of Maryland shall govern this Agreement. Exclusive jurisdiction and venue for all disputes arising out of or relating to this Agreement shall reside in a Maryland court of competent jurisdiction situated within Baltimore County, Maryland. In the event either party must commence a legal action in order to enforce any rights under this Agreement, the successful party shall be entitled to all court costs and reasonable attorney's fees as determined by the court for prosecuting and defending the claim as the case may be. The parties expressly waive any right they may have to a trial by jury for all disputes arising from or relating to this Agreement.

**19. Severability:** In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provisions void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by the Parties.

**20. Force Majeure:** The Company assumes no liabilities for delays or non-performance resulting from, but not limited to, Acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation or any acts beyond the control of the Company.

**21. Assignment:** Neither the Company nor the Buyer may assign this Agreement or any of the rights and obligations set forth herein to any third party absent written consent executed by the non-assigning party.

**22. Employees of the Company:** Buyer recognizes that the Company is only able to maintain its consistently high level of service and expertise by virtue of the specialized knowledge, training, and experience of its employees. The hiring of any of its personnel by Buyer, therefore, may cause the Company significant damages which are difficult, if not impossible to accurately quantify. Accordingly, during the term of any work assignment and/or contractual Agreement and for a period of one (1) year following the last day of work, Buyer agrees that it shall not suggest to, attempt to persuade, solicit, cause, or induce any employee of the Company to leave the employ of the Company for any reason. Buyer further agrees that, for the same period, it shall not directly or indirectly, hire or engage any employee of the Company and that breach of this provision shall: (a) constitute a material breach of any agreement in effect between the parties; (b) serve as cause for the issuance of an injunction by a court of competent jurisdiction against Buyer to stop the conduct, practice, or arrangement placing Buyer in breach; and (c) entitle the Company to damages commensurate with the value of the lost services.

**23. Tariffs and Duties:** All tariffs, duties and similar applicable fees are not included in the quoted price and are to be fully borne by the Purchaser. All quoted prices are subject to adjustment in favor of Seller in the event of additional or increased applicable tariffs, duties or similar charges.